

Twyne's Case  
76 ER 809; 3 Co. Rep. 80b (1601)

In an information by Coke, the Queen's Attorney General, against Twyne of Hampshire, in the Star Chamber, for making and publishing of a fraudulent gift of goods: the case on the stat. of 13 Eliz. cap. 5 was such;

Pierce was indebted to Twyne in four hundred pounds, and was indebted also to C. in two hundred pounds. C. brought an action of debt against Pierce, and pending the writ, Pierce being possessed of goods and chattels of the value of three hundred pounds, in secret made a general deed of gift of all his goods and chattels real and personal whatsoever to Twyne, in satisfaction of his debt; notwithstanding that Pierce continued in possession of the said goods, and some of them he sold; and he shored the sheep, and marked them with his own mark: and afterwards C. had judgment against Pierce, and had a *fiery facias* directed to the Sheriff of Southampton, who by force of the said writ came to make execution of the said goods; but divers persons, by the command of the said Twyne, did with force resist the said Sheriff, claiming them to be the goods of the said Twyne by force of the said gift; and openly declared by the commandment of Twyne, that it was a good gift, and made on a good and lawful consideration. And whether this gift on the whole matter was fraudulent and of no effect by the said act of 13 Eliz. or not, was the question.

And it was resolved by Sir THOMAS EGERTON, Lord .Keeper of the Great Seal, and by the Chief Justice POPHAM and ALMBRSON, and the whole court of Star Chamber, that this gift was fraudulent, within the statute of 13 Eliz. And in this case divers points were resolved:

1st. That this gift had the signs and marks of fraud, because the gift is general, without exception of his apparel, or any thing of necessity; for it is commonly said, *quod dolus versatur in generalibus*.

2nd. The donor continued in possession, and used them as his own; and by reason thereof he traded and trafficked with others, and defrauded and deceived them.

3rd. It was made in secret, *et dona clandestina sunt semper suspiciosa*.

4th. It was made pending the writ.

5th. Here was a trust between the parties, for the donor possessed all, and used them as his proper goods, and fraud is always apparelled and clad with a trust, and a trust is the cover of fraud.

6th. The deed contains, that the gift was made honestly, truly, and bona fide, *et clausulae inconsoetae semper inducunt suspiciosem*.